

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1305 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

SHAH KANUBHAI KANTILAL

Versus

NARHARIBHAI NATHALAL BAROT

Appearance:

MR MB GANDHI for Petitioner

MR. Y.V. BRAHMBHATT, ADVOCATE, for Respondent No. 1

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 23/09/98

ORAL JUDGEMENT

This Revision is directed against the order dated 23.6.1998 passed by the Appellate Bench of the Small Causes Court at Ahmedabad whereby the Bench by interim order dated 23.6.1998 pending the Civil Appeal No. 85 of 1998 against the judgement and decree dated 31.3.1998 passed by the judge, Small Causes Court, has granted stay against execution on usual terms and conditions till final disposal of the appeal.

It is contended by Mr. M.B. Gandhi that the Appellate Bench has committed illegality in exercise of jurisdiction in granting stay on execution of the decree which includes due rent of rs. 205/- and deposit of Rs.

14,828/- towards due tax. Mr. Brahmabhatt, learned counsel for the respondent has raised a preliminary objection with respect of the maintainability of the present revision application on the ground that the impugned order is an interlocutory order. It is submitted by the learned counsel that the impugned order is not a case decided and therefore as decided by this court as well as apex court in catena of cases that the court is not to interfere with any interlocutory order. He further submitted that the question of payment of municipal tax was argued at length before the first appellate court. The execution of decree has been stayed by the first appellate court only after hearing the parties on the question of liability of the tenant with respect to the payment of municipal tax.

I have considered the rival contentions. The trial court on consideration of the material on record including the counterfoil Exh. 74 to 89 found the rent of the premises at Rs. 235/- per month plus municipal taxes to be paid by the defendant. It is further submitted that as the defendant did not pay rent, Distress Warrant No. 964 of 1991 was executed and at that time the defendant had paid ten months rent and receipts were prepared. There is some indication with respect to the payment of municipal tax in the said receipts. Another Distress Warrant No. 218 of 1992 was issued against the defendant-tenant. However, the said Distress Warrant was not executed as the tenant filed an application for standard rent. The said Standard Rent Application was dismissed for default. It further appears that the defendant had paid tax to the municipal corporation directly. More evidence has been produced before the trial court in that regard. Issue No. 8 has been decided in favour of the plaintiff holding that the rent of the suit premises is Rs. 235/- plus municipal taxes. It is clearly held that tax liability is of the tenant. It is of course true that the finding has been challenged by the tenant before the first appellate court. The trial court has permitted deposit of the municipal taxes to the tune of Rs. 14,828/-. It is a sort of money decree which could not have been stayed except for a very strong reason. No such reasons appear from the impugned order. In view of this, in my view, the impugned order granting stay of the execution without deposit of the amount of Rs. 14,828/- is illegal and arbitrary.

In view of the aforesaid this revision application is allowed and the impugned order dated 23.6.1998 is modified to the extent that there shall be stay against execution of decree passed in H.R.P. Suit

No. 812 of 1995 on usual terms and conditions and on further condition that the tenant Narharibhai Nathalal Barot deposits the amount of Rs. 14,828/-. On the request of the learned counsel for the respondent tenant he is allowed six months time to deposit the amount. If the amount is not deposited within a period of six months, interim relief granted shall stand automatically vacated. This order will not have any reflection on the merit of the appeal pending before the appellate court of the Small Causes Bench. Appropriate directions with respect to withdrawal of the deposit by the plaintiff landlord shall be passed at the time of final disposal of the appeal. Rule made absolute. No order as to costs.

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